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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

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Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason General category bluefin tuna quota transfer and retention limit adjustment.

SUMMARY: NMFS is transferring 21 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the General category December 2015 subquota period to the January 2015 subquota period (from January 1 through March 31, 2015, or until the available subquota for this period is reached, whichever comes first). NMFS also is adjusting the Atlantic tunas General category BFT daily retention limit for the January 2015 subquota period to three large medium or giant BFT from the default retention limit of one. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels when fishing commercially for BFT.

DATES: The quota transfer is effective January 1, 2015. The General category retention limit adjustment is effective January 1, 2015, through March 31, 2015.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978-281-9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 et seq.) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 et seq.) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended by the recently published Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014, ) and in accordance with implementing regulations. NMFS is required under ATCA to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

#### Inseason Transfer to the General Category

The 2010 ICCAT recommendation regarding western BFT management resulted in baseline U.S. quotas for 2011 and for 2012 of 923.7 mt (not including the separate 25 mt that ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). The allocation formula applied in the 2011 BFT quota rule (76 FR 39019, July 5, 2011) resulted in a codified quota of 435.1 mt for the General category fishery (a commercial tunas fishery in which handgear is used), which was then further divided according to the time-period allocations established in the 2006 Consolidated HMS FMP. The General category quota and time period subquotas as codified were not modified for

2012, 2013, or 2014. Although the 2014 ICCAT recommendation regarding western BFT management would result in an increase to the baseline U.S. BFT quota and subquotas for 2015, domestic implementation of that recommendation will take place in a separate rulemaking, likely in mid-2015.

Among other things, Amendment 7 revised the allocations to all quota categories, effective January 1, 2015. As a result, based on the currently codified quota of 923.7 mt, the General category quota is 403 mt. See § 635.27(a). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a portion of the annual General category quota. Although it is called the “January” subquota, the regulations allow the General category fishery under this quota to continue until the subquota is reached or March 31, whichever comes first. Based on the General category quota of 403 mt, the subquotas for each time period are as follows: 21.4 mt for January; 201.5 mt for June through August; 106.8 mt for September; 52.4 mt for October through November; and 21 mt for December. Any unused General category quota rolls forward within the fishing year, which coincides with the calendar year, from one time period to the next, and is available for use in subsequent time periods.

During the Amendment 7 rulemaking, NMFS received comment from General category participants that NMFS should provide more quota to the January subquota period and should consider shifting subquota from December to the January period. Some of the comments expressed concern that, due to the timing of NMFS’ implementation of quota rules and/or quota specifications (which are usually finalized mid-year), General category participants in the January period do not benefit from any increased opportunities that may become available to those fishing in the summer and fall. The final rule implementing Amendment 7 responded to

this concern and allows NMFS to proactively transfer General category quota from one time period to an earlier time period in the same calendar year.

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after considering determination criteria provided under § 635.27(a)(8), including the five new criteria recently added in Amendment 7, which include: The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; the estimated amounts by which quotas for other gear categories of the fishery might be exceeded; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds; optimizing fishing opportunity; accounting for dead discards, facilitating quota monitoring, supporting other fishing monitoring programs through quota allocations and/or generation of revenue; and support of research through quota allocations and/or generation of revenue.

NMFS has considered the relevant determination criteria regarding inseason adjustments and their applicability to the General category fishery for the January 2015 subquota period. A principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and

Amendment 7, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations.

General category landings in the winter BFT fishery, which typically occurs in the mid-Atlantic beginning in December or January each year, are highly variable and depend on availability of commercial-sized BFT to participants. As of early December, commercial-sized BFT are actively being landed. For the last three years, under a daily retention limit of two large medium or giant BFT, the available January subquota (23.1 mt) was reached on January 22, 2012, February 15, 2013, and March 21, 2014. For these same three years, the General category did not reach its available quota by the end of the year.

A quota transfer from the December 2015 to January 2015 period would provide additional opportunities to harvest the available U.S. BFT quota without exceeding it, while preserving the opportunity for General category fishermen to participate in the winter BFT fishery. NMFS also anticipates that up to 94.9 mt of underharvest of the 2014 adjusted U.S. BFT quota will be carried forward to 2015 to the Reserve, in accordance with the regulations implementing Amendment 7. This, in addition to the fact that any unused General category quota will roll forward to the next subperiod within the calendar year, and the anticipated increase in the U.S. quota and subquotas for 2015 as a result of ICCAT recommendations, make it very likely that General category quota will remain available through the end of 2015 for December fishery participants, even with the quota transfer. NMFS also may choose to transfer unused quota from the Reserve or other categories, inseason, based on consideration of the determination criteria. Therefore, NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General category quota. Thus, the quota transfer would allow fishermen to take advantage of the availability of fish on the fishing

grounds now, consider the expected increases in available quota later in the year, and provide a reasonable opportunity to harvest the full U.S. BFT quota.

Other considerations consistent with the regulatory criteria include, but are not limited to, the following:

Biological samples collected from BFT landed by General category fishermen and provided by BFT dealers continue to provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Continued BFT landings would support the collection of a broad range of data for these studies and for stock monitoring purposes. Without a quota transfer at this time, the quota available for the January through March 2015 period would be 21.4 mt (5.3 percent of the General category quota), and participants would have to stop BFT fishing activities once that amount is met, while commercial-sized BFT may remain available in the areas General category permitted vessels operate. Transferring the 21-mt quota available for December 2015 (5.2 percent of the General category quota) would result in 42.4 mt (10.5 percent of the General category quota) being available for the January subquota period.

This action will be taken consistent with the quotas previously implemented and analyzed in the 2011 BFT quota final rule, as adjusted by the final rule to implement Amendment 7, and consistent with the objectives of the 2006 Consolidated HMS FMP and Amendments, and is not expected to negatively impact stock health. It is also supported by the Supplemental Environmental Assessment prepared for the 2013 quota specifications and the Final Environmental Impact Statement/Regulatory Impact Review/Final Regulatory Flexibility Analysis prepared for Amendment 7.

Based on the considerations above, NMFS has decided to transfer 21 mt of General

category quota allocated for the December period to the January period. The transfer will provide a reasonable opportunity to harvest the U.S. quota of BFT, without exceeding it, while maintaining an equitable distribution of fishing opportunities; allow the collection of a broad range of data for stock monitoring purposes; and be consistent with the objectives of the 2006 Consolidated HMS FMP and Amendments. Therefore, NMFS transfers the 21 mt to the General category January 2015 period, resulting in a subquota of 42.4 mt for that period and a December period subquota of 0 mt for the 2015 fishing year. NMFS will close the General category fishery when the adjusted General category January period subquota has been reached, or it will close automatically on March 31, 2015, and it will remain closed until the General category fishery reopens on June 1, 2015.

#### Adjustment of General Category Daily Retention Limit

Unless changed, the General category daily retention limit starting on January 1 would be the default retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel per day/trip (§ 635.23(a)(2)). This default retention limit would apply to General category permitted vessels and to HMS Charter/Headboat category permitted vessels when fishing commercially for BFT. For the 2014 fishing year, NMFS adjusted the daily retention limit from the default level of one large medium or giant BFT to two large medium or giant BFT for the January subquota period (78 FR 77362, December 23, 2013), which closed March 21, 2014, when the subquota was met (79 FR 15924, March 24, 2014); and four large medium or giant BFT for the June through August period (79 FR 30745, May 29, 2014) as well as the September, October through November, and December periods (79 FR 50854, August 26, 2014).

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8), and listed above. NMFS has considered the relevant criteria and their applicability to the General category BFT retention limit for the January 2015 subquota period. These considerations include, but are not limited to, the following:

As described above with regard to the quota transfer, additional opportunity to land BFT would support the collection of a broad range of data for the biological studies and for stock monitoring purposes. In 2012, 2013, and 2014, under a two-fish limit, the available January subquota (23.1 mt) was reached on January 22, February 15, and March 21, respectively, and in each of these years the General category did not reach its available quota by the end of the year. For the remainder of the 2014 General category fishery (i.e., June through December), NMFS adjusted the daily retention limit to four fish, and preliminary landings information indicate that the General category will be close to but likely not fill its quota. As this action would be taken consistent with the previously implemented and analyzed quotas, it is not expected to negatively impact stock health. It is also supported by the Environmental Analysis for the 2011 final rule regarding General and Harpoon category management measures, which increased the General category maximum daily retention limit from three to five fish (76 FR 74003, November 30, 2011).

As above, the winter BFT fishery is variable, but as of early December 2014, commercial-sized BFT are actively being landed. Considering this information and the transfer of the December 2015 subquota to the quota for the January 2015 time period (for an adjusted total of 42.4 mt), the default one-fish limit likely would be overly restrictive. Increasing the



daily retention limit from the default may mitigate rolling an excessive amount of unused quota from one time-period subquota to the next and thus help maintain an equitable distribution of fishing opportunities. Although NMFS has the authority to set the daily retention limit to up to five fish, the rate of harvest of the January subquota could be accelerated under a high limit (and higher fish availability), and result in a relatively short fishing season. A short fishing season may preclude or reduce fishing opportunities for some individuals or geographic areas because of the migratory nature and seasonal distribution of BFT.

Based on these considerations, NMFS has determined that a three-fish General category retention limit is warranted for the January 2015 subquota. It would provide a reasonable opportunity to harvest the U.S. quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities, help optimize the ability of the General category to harvest its full quota, allow collection of a broad range of data for stock monitoring purposes, and be consistent with the objectives of the 2006 Consolidated HMS FMP and Amendments. Therefore, NMFS increases the General category retention limit from the default limit (one) to three large medium or giant BFT per vessel per day/trip, effective January 1, 2015, through March 31, 2015, or until the 42.4-mt January subquota is harvested, whichever comes first.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example, during the January 2015 subquota period, whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the day/trip limit of three fish applies and may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeted fishing for BFT, and applies to those vessels permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

## Monitoring and Reporting

NMFS will continue to monitor the General category BFT fishery closely through the mandatory landings and catch reports. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Consistent with the regulations implementing Amendment 7, General and HMS Charter/Headboat category vessel operators are required to report the number and length of all BFT catch (i.e., retained or discarded dead) through an online catch reporting system within 24 hours of the landing(s) or end of each trip, by accessing [hmspermits.noaa.gov](https://hmspermits.noaa.gov). Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments or closures are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. Subsequent actions, if any, will be published in the Federal Register. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872-8862 or (978) 281-9260, or access [hmspermits.noaa.gov](https://hmspermits.noaa.gov), for updates on quota monitoring and inseason adjustments.

## Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and Amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement the quota transfer and daily retention limit for the January subquota time period is

impracticable as NMFS needs to wait until it has necessary data and information about the fishery before it can select the appropriate retention limit for a time period prescribed by regulation. By the time NMFS has the necessary data, implementing the retention limit following a public comment period would preclude fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria. Analysis of available data shows that the General category BFT retention limits may be increased with minimal risks of exceeding the ICCAT-allocated U.S. BFT quota.

Delays in increasing these retention limits would adversely affect those General and HMS Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day/trip and may exacerbate the problem of low catch rates and quota rollovers. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the designated time periods. Adjustment of the retention limit needs to be effective January 1, 2015, or as soon as possible thereafter, to minimize any unnecessary disruption in fishing patterns, to allow the impacted sectors to benefit from the adjustment, and to provide fishing opportunities for fishermen in geographic areas with access to the fishery only during this time period. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4) and 635.27(a)(9), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 et seq. and 1801 et seq.

Dated: December 22, 2014.

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Emily H. Menashes,  
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